Master Jig Grinding and Boring Co. *and* **David Lawrence Brown.** Case 7-CA-19451

February 17, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 30, 1982, Administrative Law Judge Karl H. Buschmann issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Master Jig Grinding and Boring Co., Farmington, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Expunge from its files any reference to the discharge of David Brown, on June 5, 1981, and notify him in writing that this has been done and that evidence of his unlawful discharge will not be used as a basis for future personnel actions against him."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT discharge any employee or interfere with the rights of our employees protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed our employees by Section 7 of the Act.

WE WILL offer David Brown immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL expunge from our files any reference to the discharge of David Brown on June 5, 1981, and WE WILL notify him that this has been done and that evidence of his unlawful discharge will not be used as a basis for future personnel actions against him.

MASTER JIG GRINDING AND BORING CO.

DECISION

KARL H. BUSCHMANN, Administrative Law Judge: This case was heard in Detroit, Michigan, on June 17, 1982. The charge was filed on June 18, 1981, and the consolidated complaint issued on July 23, 1981. The issue

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge, in concluding his discussion of Brown's discharge, describes it in terms showing this is a classic "pretext" rather than "dual lawful motives" case, and Member Jenkins accordingly does not rely on *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

[2] We adopt the Administrative Law Judge's recommended Order, except that we shall also order Respondent to expunge from its files all reference to the discharge of David Brown. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

is whether the Respondent, Master Jig Grinding and Boring Company, discharged employee David Lawrence Brown because he engaged in protected concerted activities, in violation of Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed an answer on July 30, 1981, in which it admitted all jurisdictional aspects of the complaint, but it denied the commission of any unfair labor practice.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and the Company, I make the following:

FINDINGS OF FACT

Master Jig Grinding and Boring Company is a Michigan corporation engaged in the manufacture and sale of gauges, fixtures, and related products at its place of business at 31152 W. Eight Mile Road in Farmington, Michigan. Master Jig is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The supervisory hierarchy included Randolph Vidergar as president and Fred Galyon as supervisor and general manager. On some occasions, notably when the two managers were absent, employee Joe Cartier was in charge to take care of customers or to answer the telephone. During 1981, the number of employees ranged anywhere from four to nine. On June 5, 1981, the Respondent discharged its most senior (in terms of longevity) employee, David Brown, ostensibly because he had become inefficient and a liability to the Company.

It is the General Counsel's position that the Respondent discharged Brown as a result of his protected concerted activities when he acted as the spokesman for a group of employees on June 4, 1981, the day prior to his discharge. In this regard, the General Counsel has shown that David Brown had been employed at Master Jig since November 1976. In June 1981, he had the job classification of jig borer hand, and operated a "moore jig borer, No. 3," which is used for precision milling and precision boring. During his tenure, his wages rose from $6.50 to over $11.75 an hour. He had received his latest raise about 3 months before he was discharged and had never been reprimanded orally or in writing. To the contrary, only 2 weeks before his dismissal he had asked Supervisor Galyon if there were any problems at the Company or with his work, and Galyon responded that there were no problems with the Company or his work.

On June 4, while Supervisor Galyon was passing out the paychecks, Brown asked him when the employees would receive their June bonus. Galyon indicated that the employees would not receive a bonus and suggested that they talk to Vidergar about the matter. When Brown informed his colleagues that Galyon had encouraged them to speak to Vidergar about the bonus, the employees in the shop, except for two, went to Vidergar's office and, with Brown as their spokesman, demanded to know whether they would get a bonus. Vidergar replied that, on the basis of his accountant's advice, he had decided not to pay any bonuses this year. Brown countered, stating that it was his understanding that bonuses were not tied to the annual profit picture of the Company. A general exchange followed in which Brown complained that employees had already sacrificed 10 days of Christmas leave in exchange for the bonus and the profit-sharing programs, and that the employees were confused about the Company's benefits, because none had been reduced to writing. Vidergar then told Brown to "get off his high horse" and start his own company if he did not like the way this Company was administered. The employees then returned to their work stations, and Brown engaged in a brief conversation with a fellow employee, Ron Ellis. Vidergar promptly admonished Brown to go to his machine and to go to work. This remark, according to Brown, was unusual, since the shop ordinarily functioned very loosely.

On the following morning, June 5, Brown reported for work as usual. Shortly before noon, Supervisor Galyon asked him to come to his office. There, Galyon handed Brown a check and told him that he had to let him go. Galyon expressed regret over the dismissal and indicated that he was under orders to state that the reason for the dismissal was unsatisfactory work.

In support of its position, the Respondent relied upon the testimony of its two officials, Vidergar and Galyon, as well as three employee witnesses. Vidergar first explained that the Company did not have a seniority system. He then testified that Brown had become inefficient in his job. Vidergar explained that he customarily bid on jobs on the basis of $35 an hour to tool a particular item. Considering overhead expenses, the Company would break even if an employee's wages and benefits were $18.92. Yet on one particular job, involving the tooling of six items known as the Paragon Tool job, on which the Company had bid $282, Brown had spent more than 15 hours of work at the time he was discharged. That job required an additional 3 hours of work to complete, so that a total of 18 or 18-1/2 hours were spent on the six items. At such a slow pace of work, the Company would have had to bid (18 x $18.92) or over $300 to break even or about $600 to be profitable. Vidergar also testified that Brown received too many telephone calls at the plant during 1981, when he experienced problems with his marriage. According to Vidergar, Brown was unable to sharpen his own boring tool, even though Supervisor Galyon had demonstrated to him how it was done; in addition, Brown had negligently drilled a hole into the table of his jig borer approximately 3 weeks prior to his discharge.

Supervisor Galyon also referred in his testimony to Brown's inability to sharpen his tools and the frequent telephone calls for Brown, in connection with his personal problems, sometimes as many as three to four calls per day in 1981. Galyon further testified that on April 16, 1981, Brown was more than a half hour late because he wanted to watch a rocket launch on television and that he left early on that day because "it was a sunny day." Galyon explained that the hole which Brown had drilled into his work table could interfere with the efficient operation of the machine but that it did not render it inoperative. Galyon agreed with Vidergar that Brown had taken too much time in his work on the Paragon Tool job.

Employee Ron Ellis testified that Brown refused to associate with him, preferring instead to socialize with his own clique. Knowing that others would "sneer at you" caused Ellis to have difficulties in his work. When asked what he thought of Brown's work performance, Ellis stated:

> Well, I—I've worked in places where guys were really good, and then I've seen really bad guys. He's somewhere in the middle. I mean his work wasn't all scrapped out. We saved most of it. But it's not AA grade work.

According to the testimony of Joseph Cartier, a jig grinder operator: "There were times where [Brown's] work was very good. There were times where the work was very bad. Inconsistency would be the biggest thing." Cartier recalled the day in April when Brown left work early, all the employees, except Cartier, began punching out shortly after lunch, because there was no supervision at the plant during the day. Cartier remembered that Brown was among those employees, but he was unable to recall whether Brown was the instigator or in what sequence they punched out. Employee Gary Cross similarly could not recall in what sequence the employees left on that day. In his opinion, everybody decided all at once to get their timecards and punch out.

Analysis

The record is clear and the Respondent has not contested that Brown acted as the spokesman for a group of employees who had confronted their "boss" on June 4, demanding to know whether they were going to receive the June bonus. When told that the bonus would not be paid, the employees complained about other aspects of their working conditions, such as the elimination of the 10 vacation days at Christmas time and the absence of any written company policies. Only 1 day after the meeting, their spokesman, David Brown, one of the most senior employees at the plant, was discharged with the explanation that his work was unsatisfactory. Yet Brown had not received any written or oral reprimands from his supervisors about his work performance. This evidence shows that the Respondent discharged Brown, not because of poor work performance, but because of his prominent role in the June 4 confrontation with his employer. Brown's conduct in this regard constituted protected concerted activity under Section 7 of the Act, and Respondent's discharge of Brown interfered with the rights of the employees protected by Section 7 of the Act. The General Counsel has, accordingly, established a *prima facie* case of Respondent's violation of Section 8(a)(1) of the Act.

Moreover, I find that the Respondent has failed to overcome the *prima facie* showing under *Wright Line*, 251 NLRB 1083 (1980). For example, while the Respondent offered proof concerning the frequency of personal telephone calls for Brown while he experienced marital problems, there was no showing that this problem persisted up to the time of his discharge in June. Moreover, while the Respondent had established that during one day in April Brown was late for work and, along with other employees, had taken off the rest of the afternoon, the Respondent failed to show that Brown had instigated the action or that he was habitually tardy for work. The episode, involving the damage to the table of the jig borer machine, similarly appeared unrelated to Brown's discharge. Not only was the damage done 3 weeks prior to the discharge, but it was also clear that the machine continued to function without substantial change in its operation. Finally, the record is not conclusive that Brown was responsible for the slow progress of the Paragon Tool job. Galyon admitted in his testimony that the reamer, a necessary tool for the Paragon job, was not performing properly. Accordingly, the reamer had to be retooled at least once. Indeed, Gary Luyben who performed the work on the reamer testified that he had to regrind the reamer four or five times in order to complete the Paragon job. Luyben also overheard Galyon refer to it as "a bitch job." In any case, even if Brown had taken an unusually long time in working on this particular assignment, there is no evidence that he had generally become inefficient as an employee or that his work had become unsatisfactory. Considering the entire record, particularly the timing of his discharge, the only inference is that Brown was discharged in violation of his rights protected by Section 7 of the Act.

Conclusions of Law

1. The Respondent, Master Jig Grinding and Boring Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. By discharging employee David Lawrence Brown, because he engaged in protected concerted activities, the Respondent interfered with the rights of employees guaranteed in Section 7 of the Act and thereby violated Section 8(a)(1) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully discharged an employee, must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon these findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended:

ORDER[1]

The Respondent, Master Jig Grinding and Boring Company of Farmington, Michigan, its officers, agents, successors, and assigns, shall:

[1] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the find-

Continued

1. Cease and desist from:

(a) Discharging employees or coercing any employee for engaging in concerted activities protected by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer David Brown immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the unlawful action against him, in the manner set forth in the remedy section of the Decision.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Farmington, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon their receipt and be maintained by it for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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ings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."